



DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

[Docket DARS-2022-0022]

RIN 0750-AL52

Defense Federal Acquisition Regulation Supplement:

**Representation Relating to Compensation of Former DoD Officials
(DFARS Case 2021-D030)**

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify the requirement for offerors to represent whether former DoD officials employed by the offeror are in compliance with post-employment restrictions.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Monica Wideman, telephone 703-717-3446.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is issuing a final rule to implement a recommendation of the Government Accountability Office (GAO). Section 851 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY)

2007 (Pub. L. 109-364) required GAO to report on recent employment of former DoD officials by major defense contractors. In May 2008, GAO issued a report titled "Defense Contracting: Post-Government Employment of Former DoD Officials Needs Greater Transparency (GAO-08-485)." GAO concluded that greater transparency was needed by DoD with respect to former senior and acquisition executives (i.e., DoD "covered officials") to ensure compliance with applicable post-employment restrictions.

Subsequently, DoD issued a final rule in the **Federal Register** at 76 FR 71826, effective November 18, 2011, which implemented the GAO recommendation by adding a new representation for offerors to complete and provide as part of each proposal, including proposals for commercial items. The representation is required only one time rather than continuously throughout contract performance. The solicitation provision at DFARS 252.203-7005, Representation Relating to Compensation of Former DoD Officials, is a representation that all of the offeror's employees who are former DoD officials are in compliance with all post-employment restrictions at 18 U.S.C. 207, 41 U.S.C. 2101-2107, and 5 CFR parts 2637 and 2641, as well as Federal Acquisition Regulation (FAR) 3.104-2.

A more recent GAO Report titled "GAO-21-104311, Post-Government Employment Restrictions-DoD Could Further Enhance Its Compliance Efforts Related to Former Employees Working for Defense Contractors," dated September 9, 2021, states that in 2011 DoD modified its acquisition regulations to require that

contractors, when submitting proposals in response to DoD solicitations, represent their employees' compliance with several post-Government employment restrictions. Although GAO recognized that DoD has provided guidance on section 1045 of the NDAA for FY 2018 (Pub. L. 115-91), to include DoD Instruction 1000.32, "Prohibition of Lobbying Activity by Former DoD Senior Officials," the GAO report pointed out that DoD has not added section 1045 of the NDAA for FY 2018 to the list of post-Government employment ethics provisions currently enumerated within the solicitation provision at DFARS 252.203-7005. Specifically, since section 1045, which restricts lobbying activities with respect to DoD matters by former DoD senior officials, was enacted after the addition of DFARS 252.203-7005 in 2011, it was not originally included in the list of enumerated post-Government employment provisions. Therefore, GAO recommended that DoD assess whether to amend the DFARS to add section 1045 to the required offeror representation concerning compliance with post-Government employment restrictions.

This final rule revises DFARS provision 252.203-7005, Representation Relating to Compensation of Former DoD Officials, to add the statutory reference to section 1045 of the NDAA for FY 2018 to the existing list of post-Government employment restrictions to ensure that, to the extent the individuals are "covered DoD officials" under the definition at DFARS 252.203-7000, the lobbying activities restrictions contained in section

1045 are included among the enumerated post-Government employment ethics provisions. Additionally, the provision language was revised to clarify that former personnel are required to comply with all applicable post-Government employment restrictions, not just those enumerated in the solicitation provision at DFARS 252.203-7005.

An obsolete reference to 5 CFR 2637 is removed from the provision. Part 2637 was removed from title 5 of the CFR in a final rule published in the **Federal Register** at 73 FR 36168 (June 25, 2008).

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

The statute that applies to the publication of the FAR is 41 U.S.C. 1707, Publication of Proposed Regulations. Subsection (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors.

Under the existing DFARS requirement, offerors must represent that their employees subject to section 847 of the NDAA for FY 2008 are in compliance with applicable post-Government employment restrictions, which are outlined in the written post-

Government employment opinion letter issued pursuant to section 847. Following the enactment of section 1045 of the NDAA for FY 2018, DoD included the requirement in DoD Instruction 1000.32, Prohibition of Lobbying Activity by Former DoD Senior Officials, that post-Government employment opinions address section 1045, where applicable. Therefore, this final rule is not required to be published for public comment, because it does not constitute a significant DFARS revision within the meaning of FAR 1.501-1 and does not have a significant cost or administrative impact on contractors or offerors (see Section I of this preamble).

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Services and Commercial Products, Including Commercially Available Off-the-Shelf (COTS) Items

This rule amends the solicitation provision at DFARS 252.203-7005. However, this rule does not impose any new requirements on contracts at or below the SAT or for commercial services or commercial products, including COTS items. The provision will continue to apply to acquisitions at or below the SAT and to acquisitions of commercial services and commercial products, including COTS items.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including

potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

As required by the Congressional Review Act (5 U.S.C. 801-808) before an interim or final rule takes effect, DoD will submit a copy of the interim or final rule with the form, Submission of Federal Rules under the Congressional Review Act, to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. A major rule under the Congressional Review Act cannot take effect until 60 days after it is published in the **Federal Register**. The Office of Information and Regulatory Affairs has determined that this rule is not a major rule as defined by 5 U.S.C. 804.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501-1, and 41 U.S.C. 1707 does not require publication for public comment.

VII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Part 252

Government procurement.

Jennifer D. Johnson,

Editor/Publisher, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

2. Amend section 252.203-7005 by—

- a. Revising the provision date;
- b. Revising paragraph (b); and
- c. Adding “(End of provision)” at the end of the provision.

The addition and revisions read as follows:

252.203-7000 Representation Relating to Compensation of Former DoD Officials.

* * * * *

REPRESENTATION RELATING TO COMPENSATION OF FORMER DOD OFFICIALS
(SEP 2022)

* * * * *

(b) By submission of this offer, the Offeror represents, to the best of its knowledge and belief, that all covered DoD

officials employed by or otherwise receiving compensation from the Offeror, and who are expected to undertake activities on behalf of the Offeror for any resulting contract, are presently in compliance with all applicable post-employment restrictions, including those contained in 18 U.S.C. 207, 41 U.S.C. 2101-2107, 5 CFR part 2641, section 1045 of the National Defense Authorization Act for Fiscal Year 2018 (Pub. L. 115-91), and Federal Acquisition Regulation 3.104-2.

(End of provision)

[FR Doc. 2022-20965 Filed: 9/28/2022 8:45 am; Publication Date: 9/29/2022]